

UNITED STATES DISTRICT COURT
for
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

U.S.A. vs. Sylvester Kirkland

Docket No. 5:11-MJ-1761-1

Petition for Action on Probation

COMES NOW Debbie W. Starling, probation officer of the court, presenting a petition for modification of the Judgment and Commitment Order of Sylvester Kirkland, who, upon an earlier plea of guilty to Driving While Impaired (Level 4), in violation of 18 U.S.C. §13, assimilating N.C.G.S. 20-138.1, was sentenced by the Honorable James E. Gates, U.S. Magistrate Judge, on July 11, 2012, to a 12-month term of probation under the standard conditions adopted by the court and the following additional conditions:

1. The defendant shall perform 48 hours of community service as directed by the probation office and if referred for placement and monitoring by the State of North Carolina, pay the required \$200 fee.
2. The defendant shall participate as directed in a program approved by the probation office for the treatment of narcotic addiction, drug dependency, or alcohol dependency which will include urinalysis testing or other drug detection measures and may require residence or participation in a residential treatment facility.
3. The defendant shall abstain from the use of any alcoholic beverages, shall not associate with individuals consuming alcoholic beverages, shall not frequent business establishments whose primary product to the consumer is alcoholic beverages, and shall not use any medication containing alcohol without the permission of the probation office or a prescription from a licensed physician.
4. The defendant shall obtain a substance abuse assessment from an appropriate mental health facility within thirty (30) days from the date of this judgment and complete any prescribed treatment program. The defendant must pay the assessment fee and any added treatment fees that may be charged by the facility.
5. It is further ordered that the defendant shall participate in any other Alcohol/Drug Rehabilitation and Education program as directed by the U.S. Probation Office.
6. The defendant shall surrender his North Carolina driver's license to the Clerk of this Court for mailing to the North Carolina Division of Motor Vehicles and not operate a motor vehicle on the highways of the State of North Carolina except in accordance with the terms and conditions of a limited driving privilege issued by the appropriate North Carolina Judicial Official.

On September 17, 2012, the defendant's conditions of supervision were modified to include 120 days of Remote Alcohol Monitoring (and curfew) as a result of alcohol use. On October 16, 2012, and November 7, 2012, the court was notified of the defendant's alcohol use on October 14, 2012, and November 1, 2012. His supervision was continued based upon his participation in intensive outpatient counseling through the VA Medical Center and application for admission to inpatient treatment.

RESPECTFULLY PRESENTING PETITION FOR ACTION OF COURT FOR CAUSE AS FOLLOWS: On November 18, 2012, and November 21, 2012, the defendant submitted to breathalyzer testing as part of the Remote Alcohol Monitoring Program. These tests yielded BAC readings of .05 and .03, respectively. Additionally, the defendant was charged with Driving While License Revoked (12CR8277) in Cumberland County, North Carolina, on November 21, 2012. The defendant advised that he drove to his treatment session at the VA Medical Center on November 21, 2012, and was charged on his way home. Kirkland is scheduled for admission to the 35-day residential care program, on December 10, 2012, at the VA Medical Center in Salisbury, North Carolina. Upon successful completion of the inpatient program, he will undergo a 90-day aftercare phase. In order to allow the defendant an opportunity to participate in inpatient treatment, it is respectfully recommended that his supervision be continued. As a punitive sanction, it is recommended that he complete 48 hours of community service. In order to monitoring his alcohol use after inpatient treatment, it is recommended that he remain on Remote Alcohol Monitoring/Curfew for the duration of supervision.

The defendant signed a Waiver of Hearing agreeing to the proposed modification of supervision.

PRAYING THAT THE COURT WILL ORDER that probation be modified as follows:

1. The defendant shall perform 48 hours of community service as directed by the probation office and if referred for placement and monitoring by the State of North Carolina, pay the required \$200 fee.
2. The defendant shall abide by all terms and conditions of the Remote Alcohol Monitoring Program, as directed by the probation officer, for the remaining period of supervision.
3. In conjunction with the Remote Alcohol Monitoring Program, the defendant shall adhere to a curfew as directed by the probation officer for the remaining period of supervision. The defendant is restricted to his residence during the curfew hours.

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Except as herein modified, the judgment shall remain in full force and effect.

Reviewed and approved,

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Robert L. Thornton
Robert L. Thornton
Supervising U.S. Probation Officer

/s/ Debbie W. Starling
Debbie W. Starling
U.S. Probation Officer
310 Dick Street
Fayetteville, NC 28301-5730
Phone: (910) 483-8613
Executed On: December 3, 2012

ORDER OF COURT

Considered and ordered this 4th day of December, 2012, and ordered filed and made a part of the records in the above case.


James E. Gates
United States Magistrate Judge